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RE: Application No. 09/875,553
Response to Office Action Summary dated 10/10/2002

Examiner: Alimenti, Susan C.
Art Unit 3644

Claim Objections

- 1) It is agreed line 3 of Claim 1 is to be corrected to delete "the" as it appears before "said canister." Line 3 of Claim 1 should correctly read as follows:

"(b) providing an entrance and egress hole in said canister"

- 2) It is agreed line 4 of Claim 4 is to be corrected to add "the" before the word bottom. Line 4 of Claim 4 should correctly read as follows:

"fitted to the bottom of said pole whereby said pole can be planted in a wetlands area without"

It is further agreed line 5 of Claim 4 is to be corrected to replace the phrase "seepage to the inside of" with "seeping into the." Line 5 of Claim 4 should correctly read as follows:

"water seeping into the inside of said pole chamber."

- 3) It is agreed line 4 of Claim 5 is to be corrected to delete "the" before the second occurrence of said. Line 4 of Claim 5 should correctly read as follows:

"pole segment to secure to the bottom of said duck nesting house; said top pole segment"

It is further agreed line 8 of Claim 5 is to be corrected to delete "the" before said. Line 8 of Claim 5 should correctly read as follows:

"whereby said bottom pole segment can be permanently planted in shoreline areas and"

It is further agreed line 5 of Claim 5 is to be corrected by adding the phrase "is capable of" before the word sliding. Line 5 of Claim 5 should correctly read as follows:

② "is capable of sliding inside the bottom pole segment of slightly larger diameter; stabilizing collars"

Claim Rejections – 35 USC 112

- 4) I disagree that Claims 1, 4 and 5 are to be rejected as being indefinite. The present invention has proven to be such a problem solver over prior art, both patented and not patented, that I would hate to see it rejected for patent simply because the claims, written by an amateur, do not withstand correct examiner scrutiny. I propose a modification of the claims and request your assistance in writing claims that thoroughly document the novel features of the present invention.

This duck nesting house was built for the purpose of increasing the population of wild migratory wood ducks ~~in Minnesota~~. There have been two main problems to be solved in this endeavor. The first and most important problem is keeping predators, primarily raccoons, away from the nest during the incubation of the eggs. Second, having a duck nesting house that is inexpensive and easy to maintain so that wildlife advocates, environmentalists and waterfowl enthusiasts could sustain and increase the wood duck population in wilderness areas. The present invention is also meant for use in an urban or suburban environment. Wood ducks will migrate to a neighborhood backyard if there is a pond, river or creek within 1 ½ miles from the nest. Wood ducks have been observed hatching in a hollowed out tree trunk in a city park and then walking the distance of a mile to the nearest pond. Wood ducks are wild migratory waterfowl that some folks will have occasion to see. There was a time when there were sufficient old hollowed out tree trunks for wood ducks to find their own nest. However, as wetlands and old growth forests have been diminished by development of houses and factories, so has the natural environment for the wood duck. With the natural environment of the wood duck being developed for human habitation, the wood duck population has been decimated. Numerous individuals and waterfowl associations have sought solutions to increase the population of wood ducks before the species is completely eliminated.

The present invention was built to solve those problems. Raccoons are notorious predators to the wood duck. Raccoons eat the eggs and eat the baby ducks, or fledglings, before they grow feathers and can fly away. (a) The wood duck nesting house of the present invention was very deliberately designed with a smooth, slippery surface of PVC plastic material to thwart the raccoon. If the duck nesting house were made of wood, the raccoon can very easily use its claws to dig into the wood and claw its way to the nest. Raccoons and squirrels have scaled tree trunks with the same agility. However, the smooth, slippery exterior surface of the present invention makes it impossible for the raccoon to make indentations in the plastic material. The raccoon cannot use its claws to scratch or gouge indentations in the plastic material to use for

climbing to the nest. By using slippery smooth PVC plastic material, the present invention was designed to stop the natural predator from clawing its way to the nest. (b) The round canister shape of the present invention was a deliberate design to thwart the raccoon by denying it any leverage to grasp. There are no corners or edges in the present invention. There are no borders or fulcrums that the raccoon can use to anchor its hind feet while its front paws reach for eggs in a nest. There are no screws or hinges or protuberances of any type on the exterior of the canister. The round contour of the present invention once again denies the raccoon any advantage. The raccoon just slips off the slippery round exterior surface and falls to the ground because it can find nothing to grasp. (c) The prototype of the present invention was built with a distance of 9 ½ inches from the bottom of the duck house canister to the ingress hole. That is a calculated design feature to insure that a raccoon cannot reach from the top of the pole, around the bottom and side of the canister and grab hold of the edge of the ingress hole. The 9 ½ inch distance is too far for a raccoon to reach. Any raccoon that would try to reach the ingress hole would need to let go of the pole, try to hug the slippery surface of the canister, a canister that is 10 inches in diameter, and scamper up a smooth, round surface. That is an impossible task for the raccoon. A raccoon cannot hug a round object with a diameter that large. Those rapacious raccoons that have tried to scale numerous prototypes have just slid off and fallen to the ground. There are currently about a dozen prototypes being tested in various wilderness locations in Minnesota. The prototypes have been in location for two or three annual nesting cycles. To date, not one prototype duck nesting house has been successfully raided by a raccoon, a squirrel or any other predator. Not one. In fact, the egg count after the nesting season has shown that nests routinely produce ten to twelve eggs, which is considered a great success. Of even greater interest is the fact that some locations showed eggshells on the ground, next to the pole, beneath the canister. This suggests that the mother duck assisted the fledglings by peeling back and discarding bits of the eggshell to help the fledgling hatch from the eggshell. Any raccoon or predator would have ingested the entire egg. Observations of the prototype after the nesting period have found the mother ducks in a nearby pond, each leading 10 or 12 little fledglings. The prototype of the present invention has been a huge success over prior art in repelling the attacks from any predators and has dramatically increased the chances to save the wood duck from extinction.

Of equal importance is cost and maintenance of the wood duck nesting house. If that task is made too difficult, then wood duck enthusiasts will soon abandon the endeavor at upkeep of the houses. If it were too difficult or expensive to maintain the nesting houses, the nesting houses would soon deteriorate and be unusable by the wood ducks. Nesting houses made of wood have been previously shown to seriously deteriorate over several years due to the wet and cold weather. Wood will rot and replacing wood nesting houses is costly and time consuming. Nesting houses made of metal have also deteriorated quickly with the wet weather. The expense and time involved in walking through a wilderness area to replace wood or metal duck nesting houses is a serious deterrent to using that type of structure. The present invention solves this problem. The present invention made of plastic material will not rot like wood, nor rust like metal. The PVC material has a much longer life and is therefore

less expensive to maintain, as it will not need to be repaired or replaced as quickly as wood or metal.

In addition to the deterioration caused by weather, neither wood nor metal nesting houses have been shown to provide the most suitable inside nest temperature range for healthy egg development. By setting atop the eggs, the mother duck controls the proper temperature for egg incubation. However, if the climate outside the nesting house heats up, the dark wood or dark metal nesting house will absorb the heat from the outside and thereby raise the temperature inside the nesting area to an unacceptable level that will cook the eggs before the eggs are ready to hatch. The wood or metal nesting house has been shown to be vulnerable to outside temperature changes. The white plastic material of the present invention will not absorb the outside heat, like that of wood or metal, and will therefore more effectively assist the mother duck to maintain the proper temperature inside the nesting area. The testing of the prototypes for inside nesting area temperature range, has shown the PVC plastic material of the present invention to be of superior quality control over the wood or metal nesting houses. The temperature range inside the prototypes for the present invention did not significantly nor adversely increase as the outside temperature increased. The ability of the white plastic material used in the present invention was beneficial over the prior art in not absorbing the increased outside temperature. The white plastic material of the present invention actually facilitated maintaining the proper inside nesting temperature for the incubation of the eggs. This is a significant improvement over the prior art.

The pole of the present invention was also designed to deter predators. The diameter of the prototype of the present invention is 3 inches, much larger than the usual one to two inches of most poles of prior art. This extra wide diameter makes it very difficult for a raccoon or squirrel or other predator to hug the pole and climb. The front and hind limbs of predators cannot easily stretch around a pole of this diameter and climb it at the same time. The pole was designed to make it a strenuous task, if not an impossible task, for predators to stretch their limbs around and climb the pole. The slippery, smooth round surface of the pole also inhibits the ability of any predator to climb the pole. Unlike a wood pole, a raccoon cannot use his claws to gouge indentations in the plastic to assist in climbing the pole. Videotaped observations of a pair of raccoons attempting to climb the pole showed one raccoon actually standing on the shoulders of the second raccoon to gain height on the pole. These two very resourceful raccoons still could not climb the pole of the present invention. The pole was too slippery and too wide in diameter for the predators to use. The pole was designed to do exactly that, thwart the predators. The wide diameter of the pole is an improvement over the prior art.

The present invention provides a pole that is to be planted in a pond or on land. Wood ducks need to nest on or near water, as that is where they will find their food source and shelter. The pole of the present invention is a hollow chamber that is sealed at each end so that water cannot enter into the inside of the chamber. This insures that water cannot leak into the inside of the chamber. Water inside the chamber could

freeze in cold climates. As any water freezes, it expands and could crack the pole and render it useless. The pole of the present invention was sealed at each end so that it could effectively be planted in water without threat of damage from water seeping into the chamber and freezing. Prototypes of the present invention have been planted in ponds and wetlands that have been frozen over for the winter. Holes were dug through the ice of several frozen ponds. The poles were inserted through the ice hole and planted in the soft mud beneath the ice. The poles could also have been planted when the pond was not frozen over. Planting the pole in water, with the duck nesting house atop, has several advantages. First, most predators, including raccoons and squirrels, will not attempt to enter the water to get to the nesting house. This greatly increases the chance for success of the nest. Secondly, the fledglings have a soft landing on the water when they jump from the nesting house one day after hatching from the egg. Again, this greatly facilitates the success of the nest. The pole is made of PVC plastic, which will not rot like wood when planted in water, nor rust like a metal pole. The pole of the present invention was designed so that it would not crack or deteriorate under harsh winter weather conditions. The pole, used in a wetland area, is a great improvement over the prior art.

The pole of the present invention can also be planted for use in a shoreline area. It is suggested that the pole and nesting house be planted, at least, 15 feet away from any trees to deter squirrels from jumping from a tree branch to the top of the nesting house. To secure the pole in a shoreline area, a second segment was designed. The second or bottom segment of the prototype pole is only 24 inches in length. The second segment is slightly wider in diameter than the main pole. The second segment is sealed at its bottom end to prevent water or soil from seeping into the inside. The 24 inch long second pole segment is planted in the ground with the top of this segment being at ground level. The main pole is fitted with several stabilizing collars at its lower end so that it will fit tightly and securely inside the bottom segment and will not wobble. At the end of the nesting season, the main pole with nesting house atop can be removed for cleaning and storage. The 24 inch long bottom pole segment remains planted in the ground and can be capped on top, at ground level, to prevent soil from entering the chamber. Before the next nesting season, the cap can be easily identified and removed and the main pole replanted in the 24 inch long bottom segment. The pole used for the wetland area and the pole used for the shoreline area are of the same dimensions and detail. Stabilizing collars have been added to the bottom of the main pole for shoreline use.

Claim Rejections – 35 USC 103

- 5) I disagree with the rejection of this application for the present invention as not obviously different from the prior art. [In a natural setting the wood duck will make a nest in a hollowed out tree trunk. The designs of the prior art have been made to attach to a tree as in Byrns (US 4,889,075). But attaching a man made wood duck house to a tree trunk provides a means for the predators to easily gain access to the wood duck nest by scaling the tree. The present invention completely rejects any attempt to produce a wood duck nesting house that is to be attached to a tree. In fact,

the present invention suggests that the wood duck house should be at least 15 feet away from any tree and even more preferably, the wood duck house should be planted in a pond. This aspect of the present invention, to completely break from tradition, has lead to the great success of this wood duck nesting house. The success of this nesting house can be measured in the large number of eggs hatched and wood duck fledglings raised in the wild to maturity.

The present invention further breaks from tradition by being made with a round, smooth and slippery surface void of anything that a predator can use to advantage. All prior art has been made with hinges or corners or edges that raccoons can and have used to gain entrance to the nesting cavity. The present invention was made to deliberately break with the past designs that were found to be ineffective in preventing predators from gaining access to the nesting cavity. The new design of the present invention has successfully and repeatedly thwarted all predators in all field tests to date. This design works as no others before it have worked.

Raccoons are the largest in size predator of the wood duck. Raccoons are larger than squirrels. The present invention considered the size of the wood ducks greatest predator and designed a distance between the bottom of the nest canister to the ingress hole and made that distance longer than a raccoon can grasp. The present invention was made to be predator proof and it has succeeded in that endeavor where the prior art has not.

- 6) I disagree with the rejection of Claim 1 as being unpatentable over Wade (US 3,643,631) and Bennett (US 5,740,762). It is difficult for this inventor to compare the present invention for a wild migratory waterfowl to a backyard birdhouse as described in Wade or Bennett. The present invention seems mutually exclusive from Wade or Bennett. The focus of the Wade and Bennett birdhouses is to attract and provide a nesting place for birds of various sizes. The Wade and Bennett birdhouses are generally to be located in someone's backyard so that humans can enjoy watching the birds. Using any of a number of pole attachments as in Colucci (US 6,016,768) can thwart the occasional squirrel coming into a backyard. The present invention is not meant to be located in someone's backyard. Under most circumstances, except in field testing, the nesting house of the present invention will not be regularly watched and enjoyed by humans, unless the nest is located within 1 ½ miles of a pond, creek or river. The present invention is made to be planted in the wild, in a wilderness setting where there are real and regular predators. Because of the strong danger from predators the present invention was designed to thwart the predator in all aspects of its behavior.
- (a) This means the present invention was deliberately made of slippery smooth material so that predators could not use their claws to climb on a rough exterior surface.
 - (b) The present invention was made with no edges or borders or corners for predators to use for leverage.
 - (c) The length and width of the present invention was designed so that predators could not easily wrap themselves around the pole or the nesting house.

None of these special features of the present invention were an issue in the Wade or Bennett birdhouses because they didn't need to be. The focus of the Wade and Bennett birdhouses was not to deter predators but to provide a pleasant birdhouse for someone's backyard. The present invention focuses on the need to deter and thwart predators so that the wood duck population can be saved and indeed increased in the wild. This inventor understands that the Wade patent includes a mesh climbing grid or ladder. However, it should be noted that the mesh grid in Wade appears to be made of metal as is the total of the Wade birdhouse. As has been previously stated, metal will rust under normal weathering conditions. The mesh grid in the present invention is made of PVC plastic, which will withstand wet and cold conditions and not rust or deteriorate. The present invention has solved the problems of the prior art so successfully that it has won the endorsement of the Minnesota Waterfowl Association and won praise and recognition from the Ducks Unlimited organization. These two influential groups immediately recognized the problem solving improvements of the present invention over the prior art.

I thank you for your consideration of this patent application. I will telephone you to discuss any aspects of this application over which there may be a question.

Very respectfully,

Norbert P. Sonnek